

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Martin Carrera c/o La Veracruzana

Date application filed with the Town Clerk: April 24, 2009

Nature of request: Request for Special Permit to modify ZBA FY1998-0031 to increase the indoor seating capacity in new interior space, add second egress and accessible restrooms, with no changes to the exterior, under Section 10.33 of the Zoning Bylaw, at 63-71 South Pleasant Street (Map 14A, Parcel 249, B-G Zoning District).

Address: 63-71 South Pleasant Street (Map 14A, Parcel 249, B-G Zone)

Legal notice: Published on May 6 and May 13, 2009 in the Daily Hampshire Gazette and sent to abutters on May 6, 2009

Board members: Barbara Ford, Albert Woodhull, Tom Ehrgood

Submissions:

- One (1) copy of the Memorandum, ZBA FY2009-00036, dated May 15, 2009, prepared by staff;
- One (1) copy of the ZBA application, filed with the Town Clerk on April 24, 2009;
- One (1) copy of a Management Plan, dated April 10;
- One (1) copy of color rendered schematic design including floor plans and interior elevations prepared by Joseph Krupczynski;
- One (1) copy of ZBA FY1998-0031 and floor plan approved April 9, 1998;
- One (1) copy of the Fire Department review, dated May 13, 2009;
- One (1) copy of a Town GIS map showing the location of the site, submitted by staff.

Site Visit: May 18, 2009

Barbara Ford, Albert Woodhull and Tom Ehrgood met with the applicant, Martin Carrera, and Erica Gees of Kuhn Riddle Architects at the site. The Board observed the following:

- The location of the existing restaurant on the ground floor of a four (4) story brick commercial building on the west side of South Pleasant Street;
- The location of the existing vehicle alleyway immediately to the north of the existing restaurant;
- The location of two (2) tables used for outdoor dining;
- The location of the existing rear entrance;
- The location of the proposed new means of egress;

- The location of the new interior area, currently under renovation;
- The approximate location of the proposed accessible restrooms;
- The interior of the existing restaurant space.

Public Hearing: May 20, 2009

Martin Carrera, applicant and owner, and Erica Gees, of Kuhn Riddle Architects presented the application.

For the public hearing, Ms. Gees presented the Board with the following information:

- One (1) Site and Interior Plan, prepared by Kuhn Riddle Architects, dated April 17, 2009;
- One (1) large print of the floor plan schematic prepared by Joseph Krupczynski; and
- One (1) updated Management Plan.

Ms. Gees stated the following:

- Mr. Carrera is seeking a Special Permit to expand the interior space of the existing restaurant, La Veracruzana;
- The existing restaurant has been in operation since 1998;
- The expansion would allow for additional interior dining space, provide two (2) handicap accessible restrooms and create a new second means of egress;
- The new space is behind the existing restaurant area and is adjacent to Laughing Dog Bicycle;
- The seating capacity of the interior would increase from a total (including indoor and outdoor dining) of 36 patrons to 75 patrons inside and 10 patrons outside;
- The number of employees will increase from a maximum of 4 to a maximum of 6 employees;
- The establishment will remain a combination of eat in and take out food service;
- The outdoor dining, consisting of two tables with seating for 10 people will remain the same as previously permitted;
- There are no changes to the exterior of the street side of the building or signs as part of this proposal;
- The kitchen is currently oriented toward the street and the proposal involves the turning of the kitchen space to create a hallway area where pedestrians can pass by the kitchen and enter the new dining area in the rear;
- The new floor plan includes a bar area along the rear of the kitchen with stool seating for patrons to sit and eat food;
- Alcohol is currently served and will continue to be served as part of this proposal;
- The sale of alcohol is secondary to food service and the establishment is not a bar;
- There are no changes to the hours of operation which are from 7:00 A.M. to midnight, as allowed in the previous Special Permit;
- A new Management Plan was submitted which contains all relevant operation as required in the application for Special Permit;
- The Management Plan states there will be no more than four (4) employees at any one time but the applicant would like to be allowed to have up to six employees at one time;
- The proposal includes the creation of two accessible restrooms which will be a benefit to the community.

Ms. Ford asked whether the proposed occupancy of the restaurant is allowable.

Ms. Gees stated that the total number of patrons, inside and outside plus a maximum of six (6) employees is 91 people and is below the maximum allowed capacity of 125 people.

Ms. Ford asked whether there is currently a trash receptacle outside.

Mr. Carrera stated that there is a Town owned trash receptacle on the side walk, near the front of the restaurant. He stated that any rubbish produced from the two (2) outdoor dining tables is typically bussed back into the restaurant for disposal.

Ms. Ford stated that the previous permit has a condition requiring that all deliveries take place at the rear of the building; however, the new Management Plan says that the deliveries will take place predominantly in the morning and at the front of the building. She asked whether deliveries to the front of the building will inhibit vehicle or pedestrian movement.

Mr. Carrera stated that he wanted to change the way in which deliveries were stated in the Management Plan to more accurately reflect the current practice of receiving deliveries mostly from the front of the building.

Mr. Carrera stated that sometimes deliveries are from large vehicles providing limited goods and the amount of time that the vehicles are parked in the front is typically very brief.

Mr. Carrera stated that he has not received any complaints related to receiving deliveries predominantly to the front of the building.

Ms. Gees stated that most restaurants in downtown receive deliveries in the morning and that most have no choice but to have the deliveries occur in the front. She stated that La Veracruzana does benefit from having vehicle access to the rear of the building, and Mr. Carrera does have some deliveries to the back; however, they feel that allowing deliveries to be predominantly in the morning and at the front is reflective of what is currently happening.

Ms. Ford asked if there are any dumpsters for the restaurant. Mr. Carrera stated that there are two (2) dumpsters at the rear of the property and that they share them with another business.

The Board asked whether there would be any live music in the restaurant. Mr. Carrera stated that they do not currently have any live music. He added that in the future he would like to be able to have some live music on special occasions, such as when there are large gatherings of people on the Common.

The Board stated that the previous Special Permit, ZBA FY1998-0031 states that there shall not be live music on a regular basis and stated that they understand that a live entertainment license may be available from the Select Board. The Board concluded that allowing occasional live music would have to be included in the conditions of a Special Permit.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing and Mr. Woodhull seconded. The Board VOTED unanimously to close the public hearing.

Public Meeting:

During the public meeting the Board members drafted conditions and findings that would be appropriate if the Special Permit were to be approved.

The Board members determined that a new Special Permit would supersede the previous Special Permit, ZBA FY1998-0031. The Board members determined that deliveries to the restaurant could be made to the front as long as the deliveries are predominantly in the morning.

The Board members determined that a condition could allow for occasional live music with the appropriate approval from the Select Board. It was noted that the live music should only be occasional, and that the volume of any music generated should be kept at a level that would not be audible beyond the outdoor dining area.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses. The existing restaurant has been operating since 1998 and is a successful and popular establishment in the downtown area. The proposal includes interior expansion with no changes to the exterior of the building. The proposal will increase the interior seating capacity of the restaurant and will also create two handicap accessible bathrooms which will benefit the community.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The proposal includes the continued use of a ventilation system to mitigate odors produced from the restaurant. The proposal maintains outdoor dining which is consistent with the other uses located in the downtown area. The Management Plan states that the owner is responsible for maintaining the area around the restaurant free from trash and litter and will maintain the trash receptacle near the entrance of the establishment.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. The proposal does not require any changes to the exterior of the building or changes to the previously permitted outdoor dining area. The proposal includes the enhancement of pedestrian movement by creating two (2) handicap accessible restrooms. The proposal also includes the creation of a second means of egress which will benefit the safe evacuation of patrons in case of an emergency.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The interior renovations will result in expanded indoor dining capacity. The occupancy load of expanded interior area conforms to the maximum occupancy of the building based on the number of egresses provided. A trash receptacle will be maintained outside and dumpsters will be used for any rubbish produced by the restaurant. The delivery of goods will occur predominantly in the morning and at the front of the building which is adequate for the existing and expanded restaurant.

10.386 – The proposal is in conformance with the parking and sign regulations of the town. The restaurant property is located within the Municipal Parking District and is therefore not required to provide onsite parking. The restaurant utilizes existing parking spaces at the rear of the property for employees. The property is also located in close proximity to metered parking spaces in the downtown area. There are no changes to the existing signs associated with the restaurant.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. The Management Plan states that the owner is responsible for maintaining the area around the restaurant free from trash and litter and will maintain the trash receptacle near the entrance of the establishment. The Management Plan also identifies that rubbish produced by the use is moved to a dumpster at the rear of the parking area and picked up by a hauler as needed.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the proposal does not include any exterior changes to the building façade. The proposal includes interior expansions resulting in additional seating capacity which is in harmony and compatible with the existing use of the restaurant. The proposal includes a Management Plan which clearly identifies how the existing and proposed restaurant will be operated.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst because the proposal does not include any exterior changes to the existing building and will provide additional seating capacity in a popular eating establishment located in the downtown area. The proposal provides for the creation of two (2) handicap accessible restrooms, additional egress for the restaurant and the use is compatible with other uses in the downtown area including other restaurants, retail and residential uses.

Public Meeting – Zoning Board Decision

Mr. Woodhull made a motion to APPROVE the permit, with conditions. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2009-00036, to modify a previous Special Permit, ZBA FY1998-0031 to increase the interior seating capacity and to allow for the continued operation of a Class II restaurant, known as La Veracruzana, under Section 10.33 and 3.352.1 of the Zoning Bylaw, at 63-71 South Pleasant Street (Map 14A, Parcel 249, B-G Zoning District), with conditions.

BARBARA FORD

ALBERT WOODHULL

TOM EHRCOOD

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00036, to modify a previous Special Permit, ZBA FY1998-0031 to increase the interior seating capacity and to allow for the continued operation of a Class II restaurant, known as La Veracruzana, under Section 10.33 and 3.352.1 of the Zoning Bylaw, at 63-71 South Pleasant Street (Map 14A, Parcel 249, B-G Zoning District), with the following conditions:

1. This Special Permit shall supersede all previous Special Permits associated with the restaurant known as La Veracruzana.
2. The interior layout and seating arrangement of the restaurant and the outdoor dining area, shall be built and used in accordance with the Site and Interior Plan prepared by Kuhn Riddle Architects, dated April 17, 2009 and the floor plan schematic prepared by Joseph Krupczynski stamped approved by the Zoning Board of Appeals, dated May 20, 2009.
3. There shall be no more than 75 seats in the interior of the restaurant.
4. There shall be no more than two (2) outdoor dining tables including no more than 10 seats.
5. There shall be no more than six (6) employees on the premises at any one time.
6. The restaurant shall be managed in accordance with the Management Plan, stamped approved by the Zoning Board of Appeals, dated May 20, 2009.
7. The hours of operation shall be from 7:00 A.M. to midnight, seven (7) days a week.
8. Deliveries to the front of the business shall, to the extent practicable, be made in the morning with other deliveries made to the rear of the building.
9. Alcohol shall only be served with food.
10. There shall be no live entertainment on a regular basis. Should live entertainment be provided for special events, a Live Entertainment License must be obtained from the Town of Amherst Select Board in accordance with all applicable Codes and requirements.
11. Any music, pre-recorded or live, shall be controlled so as to be inaudible from the beyond the outdoor dining area and shall not from inside the building on the upper floors.
12. Management shall maintain the area along the frontage of the building and the alleyway free from litter at all times.
13. Any changes to the exterior lights or signs shall be submitted and approved by the Zoning Board of Appeals at a public meeting.
14. Upon a change in ownership or management of the restaurant a new Management Plan shall be submitted to the Zoning Board of Appeals at a public meeting to determine whether a new Special Permit is required.

BARBARA FORD, Acting Chair
Amherst Zoning Board of Appeals

DATE